IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 23-11-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL REVISION CASE No.1512 OF 2007

Hari @ Man Road Hari ...Petitioner

-vs-

State,
represented by Station House Officer,
Killai Police Station,
Crime No.23/2003. ...Respondent

Revision under Section 397 read with 401 of the Code of Criminal Procedure to set aside the order in Crl.M.P.No.55 of 2007 on the file of the Additional District Judge, Fast Track Court -1, Chidambaram dated 19.9.2007.

For petitioner : Mr.R.Sankarasubbu

For respondent : Mr.A.Saravanan,
Govt.Advocate (Criminal Side).

J U D G M E N T

This revision is filed to set aside the order, dated 19.09.2007, passed in Crl.M.P.No.55 of 2007 in S.C.No.249 of 2007 by the Additional Sessions Judge (Fast Track Court-I), Chidambaram, wherein the prayer of the petitioner for recalling the P.T.Warrant was rejected.

2. Petitioner is the accused. A case in Crime No.23 of 2003 came to be registered against him on the file of respondent police for the offences under Sections 294,392,397 and 506-II IPC. Since the police had not laid the final report within 90 days, the Judicial Magistrate, Parangipettai, released the petitioner on bail under Section 167 (2) Cr.P.C. on 16.02.2004. On 05.02.2007,

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

another case in Crime No.42 of 2007 was registered by Annamalai Nagar Police Station against the petitioner for the offences under Sections 294,324 and 307 IPC and he was remanded to judicial custody by Judicial Magistrate No.I, Chidambaram. Since the petitioner could not appear for the hearings in Crime No.23 of 2003 on account of his arrest in another case, the Judicial Magistrate, Parangipettai, issued a P.T.Warrant, pursuant to which he was produced and taken into custody. The case in Crime No.23 of 2003 had been taken on file in P.R.C.No.40 of 2006 and then it was committed to the Court of Sessions, Cuddalore, which is now pending in S.C.No.249 of 2007 on the file of Additional Sessions Court (Fast Track Court-I), Chidambaram. In the case in Crime No.42 of 2007 also, the petitioner was released on bail, however, he was not released from the prison, in view of the pendency of P.T.Warrant.

3. Learned counsel for the petitioner would strenuously contend that when the petitioner was released on bail in both the cases, detaining him in custody could not be justified and, hence, the P.T.Warrant has to be necessarily recalled.

4. I have heard the learned Government Advocate (Criminal Side).

5. It is a well settled principle of law that when an accused is produced before a Court in pursuance of a P.T.Warrant, he could not be remanded. If the bail granted to him was cancelled by the means known to law, then alone, he could be remanded. In other words, when the bail bonds are in force, it is odd to note that the Court remands him. The following decisions throw much light on the subject :

(i) Simranjit Singh Mann v. State of Bihar, 1988 L.W. (Crl.) 304, wherein the Apex Court has observed as follows :

> "20....The argument of the learned counsel for the State of Bihar was that the order for release on bail stood extinguished on the remand of the accused to custody under S.309(2) of the Code of Criminal Procedure. There is no substance whatever in this submission. S.309(2) merely enables the Court to remand the accused if in custody. It does not empower the Court to remand the accused if he is on bail. It does not enable the Court to 'cancel bail' as it were. That can only be done under S.437 (5) and 439 (2). When an accused person is granted bail, whether under the proviso to S.167(2) or under the provisions of Chapter 33 the only way the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

bail may be cancelled is to proceed under S.437 (5) or S.439 (2)."

(ii) Appu @ Santhanakumar and others v. State and others, 2004 (1) T.N.L.R.599 (Mad), in which this Court held as under :

"13....The circumstances under which a bail can be cancelled have been set out in Sanjay Gandhi's case and subsequent pronouncement by the Supreme Court. Therefore, the order passed under Section 272 Cr.P.C. pursuant to which a P.T.Warrant is issued can, by no stretch of imagination, supersede an order of bail granted to the accused. That is not the intent and purpose of a P.T.Warrant, which is purely a temporary order (directing the production of an accused to answer a charge or to give evidence etc. as contemplated under Section 267 Cr.P.C.). Therefore, merely because the accused is remanded to custody, when produced under a P.T.Warrant, that he should again seek bail in the Court of first instance, is against the provisions of law."

6. Following the illuminating legal principles contained in the decisions of the Supreme Court and also this Court, it must be held that in the absence of cancellation of bail, the Court cannot remand the accused. However, when the accused is produced on NBW, he can be remanded. It is to be reiterated that when his production is caused by means of a P.T.Warrant, the Court is not at all justified to remand him. In this case, the purpose of P.T.Warrant was over and the petitioner had to be released.

7. The Fast Track Court, Chidambaram, in its order, observed that in the committal proceedings of the Judicial Magistrate, Parangipettai, it is mentioned that the accused has been remanded to custody under a committal warrant and, hence, in the existence of such Warrant, the petitioner is not entitled for any relief, which view is wrong. When the case is committed from a Judicial Magistrate Court to a Sessions Court as per Section 209 Cr.P.C., it is to be mentioned, whether the accused is in custody. Accordingly, the fact of custody has been mentioned in the committal proceedings. But, it does not mean that the bail already granted to him has no effect. As adverted to supra, so long as the bail order is in force, the accused shall not be allowed to be in custody.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8. For the foregoing reasons, the necessary corollary would be, the petitioner has to be released. Since he has obtained bail in both the cases, keeping him in custody any longer is not justifiable. Therefore, this revision is allowed and the petitioner is ordered to be released from the custody forthwith, if he is not required in any other case. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dixit

To

1.The Additional Sessions Judge
(Fast Track Court-I),
Chidambaram.

2.The Station House Officer,
Killai Police Station,
Crime No.23/2003.

3.The Public Prosecutor,
High Court,
Madras.

CRL.R.C.No.1512 OF 2007

MS (CO)
kk 6/12

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/